

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2013 Iowa Acts, Senate File 446, section 12, the Department of Human Services amends Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

This amendment requires prior authorization (PA) for initial admission to or continued stay in a certified hospital “swing bed” for a member who no longer requires acute (inpatient) hospital care and who would otherwise meet a nursing facility or skilled level of care (LOC).

This amendment will reduce the number of swing-bed admissions, which are considerably more costly than comparable admissions in a freestanding skilled nursing facility. Freestanding skilled nursing facilities would experience a potential corresponding increase in admissions for members who previously would have been admitted to a hospital swing bed.

As part of the hospital’s discharge planning process for members requiring ongoing skilled nursing care, the hospital must complete and return to the Iowa Medicaid Enterprise (IME) an LOC determination form describing the member’s LOC needs. The hospital must also contact skilled nursing facilities within a 30-mile radius of the hospital to determine if any of those facilities have available beds and are otherwise able to meet the member’s LOC needs. Initial or ongoing swing-bed admissions will only be approved if the hospital certifies that there are no available skilled nursing beds in a freestanding facility to meet the member’s LOC needs within the 30-mile radius of the hospital. For the purpose of this requirement, an “appropriate” nursing facility bed is a bed in a Medicaid-participating freestanding nursing facility that provides the LOC required for the member’s medical condition and corresponding LOC needs. A Medicaid member who has been admitted to a swing bed must be discharged to an appropriate nursing facility bed within 72 hours of an appropriate nursing facility bed becoming available. Preadmission screening and resident review (PASRR) rules still apply for members being transferred to a nursing facility. There will be some members, such as those with ventilators or other comparable care needs, whose LOC needs cannot be met in freestanding skilled nursing facilities. In such cases, the swing-bed stay would be appropriate.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0843C** on July 24, 2013. This amendment was also Adopted and Filed Emergency and published as **ARC 0844C** on the same date and became effective July 1, 2013.

The Department received comments from 15 respondents regarding this amendment. The majority of comments were from hospitals and the Iowa Hospital Association. The comments were similar in nature and as a result are compiled by topic as follows:

**Comment topic 1:** Respondents requested that the amendment be changed to require prior authorization (PA) only for swing-bed care exceeding 14 days.

**Department response:** The Department agreed to this change from the amendment that was Adopted and Filed Emergency and changed subparagraphs 78.3(16)“b”(5) and (6) to reflect the request. The subparagraphs now read as follows:

“(5) Swing-bed stays beyond 14 days will only be approved when there is no appropriate freestanding nursing facility bed available within a 30-mile radius and home-based care for the member is not available or appropriate, as documented by the hospital seeking the swing-bed admission. For the purpose of these criteria, an ‘appropriate’ nursing facility bed is a bed in a Medicaid-participating freestanding nursing facility that provides the LOC required for the member’s medical condition and corresponding LOC needs.

“(6) A Medicaid member who has been in a swing bed beyond 14 days must be discharged to an appropriate nursing facility bed within a 30-mile radius of the swing-bed hospital or to appropriate home-based care within 72 hours of an appropriate nursing facility bed becoming available.”

**Comment topic 2:** Respondents requested that implementation of this amendment be delayed until an impact study and hospital-specific analysis can be done.

**Department response:** In light of the legislative mandate to implement this cost-savings initiative effective July 1, 2013, the Department does not believe it can delay implementation of this amendment. Additionally, to the extent this comment relates to the Adopted and Filed Emergency amendment and was received prior to discussions/negotiations with the Iowa Hospital Association (IHA) and agreement to only apply the prior authorization (PA) requirement to swing-bed admissions greater than 14 days, the Department believes delay of this amendment's implementation is no longer an issue.

**Comment topic 3:** The Adopted and Filed Emergency amendment does not take into consideration the current challenges hospitals are facing during the discharge process and the complexities with regard to swing-bed use and transition of care.

**Department response:** The Department has added provisions in the same subparagraphs as the prior authorization language (78.3(16)“b”(5) and (6)) to allow home-based care when home-based care would be appropriate for a given member. As such, the discharge and care transition concern noted in this comment has been greatly mitigated by virtue of affording another discharge and transition of care option.

**Comment topic 4:** Hospitals are concerned about the administrative burdens and increased costs this rule making places on hospitals and staff who will be required to canvas a 30-mile radius to find available nursing facility beds; the promptness of receiving a written notice of preauthorization potentially leading to an increased inpatient length of stay (LOS) for which the hospital may not be reimbursed; ongoing issues with delays regarding the preadmission screening and resident review (PASRR) process that has already led to increased LOS and kept patients in hospitals well beyond the time the patients were ready for transfer to an accepting nursing facility; and finally, ensuring adequate payment for the potential delays and added inpatient days resulting from existing PASRR delays and the new preauthorization requirement from Iowa Medicaid.

**Department response:** This rule making will greatly reduce the number of Iowa Medicaid members for whom swing-bed admissions beyond 14 days will need to occur.

With regard to the 30-mile radius issue, this amendment would continue to apply to swing-bed admissions greater than 14 days. However, given the greatly reduced number of Iowa Medicaid members who would require more than 14 days of swing-bed care, the requirement for hospitals to canvas freestanding skilled facilities within a 30-mile radius will not be a significant burden. Additionally, by virtue of adding the provisions for home-based care, as noted in the response to comment topic 3, the Department believes that the administrative burden to hospitals related to canvassing nursing facilities within a 30-mile radius has been reduced.

The IME Medical Services Prior Authorization Unit has a track record of prompt responses on PA requests generally, which are well within and considerably less than review/response time standards. Further, IME Medical Services has made the swing-bed PAs a top priority and is able to approve most (with complete documentation) within 1 business day. The IME is confident that this will extend to any needed PAs for swing-bed admissions greater than 14 days. As such, swing-bed hospitals that need to request PAs for such admissions should not experience increased lengths of stay. Hospitals anticipating such admissions should initiate the PA process at least a couple of days before reaching the 14-day threshold. This should virtually eliminate any issues in this regard. Furthermore, if any increased LOS occurs in an acute bed facility where such LOS was due in part to any delay by the IME in processing the PA, then the IME would pay for those additional acute days.

**Comment topic 5:** Hospitals are concerned with the timeliness of the written notice of decision (NOD) and the 72-hour provision in the rule. It is likely, taking into consideration the continuous operation of hospitals, that the preauthorization approval/denial may not be received in time, leaving a patient in the inpatient unit. This raises concerns for hospitals as it is unclear if the hospital will receive reimbursement for the care provided during that time. Further, hospitals questioned whether they would be denied payment for the full stay or only for subsequent swing-bed days that result after the 72-hour time frame has expired. This should be clarified in the rule to ensure appropriate requirements are in place with regard to availability and responsiveness in approving/denying preauthorization requests both during and outside regular business hours.

**Department response:** The Department does not believe there are serious issues with the timeliness of the PA approval process and issuance of the NOD for swing-bed care greater than 14 days.

Additionally, given that there will be relatively few Medicaid members requiring swing-bed care in excess of 14 days, there will not be a substantial volume of PA requests requiring review and action.

**Comment topic 6:** Several of the respondents had concerns about payment denials for transfers occurring beyond 72 hours. The average length of stay for skilled/swing-bed days in Iowa is 8 days. There have been many instances in which other regulatory requirements such as preadmission screening and resident review (PASRR) have resulted in increased LOS due to delays in Level II (PASRR) screenings conducted by an outside third-party contractor. Hospitals are concerned that these unexpected delays could cause the patient to cross over the 72-hour limit and cause the hospital to be denied reimbursement due to the PASRR process or other complicating factors resulting in delayed discharge. The IHA believes that preauthorizations should be required only after 14 days of swing-bed care.

**Department response:** As described in the response to comment topic 1, the Department has agreed to change the amendment to reflect the need for PA only after 14 days of swing-bed care.

The Council on Human Services adopted this amendment September 11, 2013.

This amendment does not provide for waiver in specified situations because requests for waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4.

This amendment will become effective November 6, 2013, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Amend subrule 78.3(16) as follows:

**78.3(16) Skilled nursing care in “swing beds.”**

a. Payment will be made for medically necessary skilled nursing care when provided by a hospital participating in the swing-bed program certified by the department of inspections and appeals and approved by the U.S. Department of Health and Human Services. Payment shall be at an amount equal to the sum of the direct care rate component limit for Medicare-certified hospital-based nursing facilities pursuant to 441—subparagraph 81.6(16) “f”(3) and the non-direct care rate component limit for Medicare-certified hospital-based nursing facilities pursuant to 441—subparagraph 81.6(16) “f”(3), with the rate component limits being revised July 1, 2001, and every second year thereafter. Swing-bed placement is only intended to be short-term in nature.

b. Any payment for skilled nursing care provided in a hospital with a certified swing-bed program, for either initial admission or continued stay, will require prior authorization, subject to the following requirements:

(1) The hospital has fewer than 100 beds, excluding beds for newborns and intensive care.

(2) The hospital has an existing certification for a swing-bed program, pursuant to paragraph 78.3(16) “a.”

(3) The member is being admitted for nursing facility or skilled level of care (if the member has Medicare and skilled coverage has been exhausted).

(4) As part of the discharge planning process for a member requiring ongoing skilled nursing care, the hospital must:

1. Complete a level of care (LOC) determination describing a member's LOC needs, using Form 470-5156, Swing Bed Certification.

2. Contact skilled nursing facilities within a 30-mile radius of the hospital regarding available beds to meet the member's LOC needs.

3. Certify that no freestanding skilled nursing facility beds are available for the member within a 30-mile radius of the hospital, which will be able to appropriately meet the member's needs and that home-based care for the member is not available or appropriate.

(5) Swing-bed stays beyond 14 days will only be approved when there is no appropriate freestanding nursing facility bed available within a 30-mile radius and home-based care for the member is not available or appropriate, as documented by the hospital seeking the swing-bed admission. For

the purpose of these criteria, an “appropriate” nursing facility bed is a bed in a Medicaid-participating freestanding nursing facility that provides the LOC required for the member’s medical condition and corresponding LOC needs.

(6) A Medicaid member who has been in a swing bed beyond 14 days must be discharged to an appropriate nursing facility bed within a 30-mile radius of the swing-bed hospital or to appropriate home-based care within 72 hours of an appropriate nursing facility bed becoming available.

Preadmission screening and resident review (PASRR) rules still apply for members being transferred to a nursing facility.

[Filed 9/11/13, effective 11/6/13]

[Published 10/2/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.